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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re SEBASTIAN P., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

SEBASTIAN P.,

Defendant and Appellant.

F076997

(Super. Ct. No. JJD070379)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Tulare County. Juliet Boccone,
Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Henry J.
Valle, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Smith, J. and Snauffer, J.

The court adjudged appellant Sebastian P. a ward of the court (Welf. & Inst. Code, § 602) after it adjudicated him of voluntary manslaughter (Pen. Code, § 192, subd. (a)),¹ a lesser included offense of the murder offense charged in a wardship petition, and it found true a gang enhancement (§ 186.22, subd. (b)(1)(C)).

On January 9, 2018, the court committed appellant to the Department of Corrections and Rehabilitation, Division of Juvenile Justice for a maximum term of confinement of 21 years, 11 years for his voluntary manslaughter adjudication and 10 years for the gang enhancement.

On appeal, appellant contends the evidence was insufficient to sustain the court's true finding on the gang enhancement. We affirm.

FACTS

At appellant's jurisdictional hearing,² the prosecutor presented evidence that around October 23, 2015, Manuel G., accompanied by others, went to the house in Tulare where Angelica G. lived and called Eduardo V. out. Eduardo was in the house, but did not go out.

On November 6, 2015, at approximately 2:20 p.m., Manuel returned to the house with appellant and Eric M. and fought with Eduardo just outside the front yard fence. As the other boys were hitting Eduardo, Manuel pulled out a knife and began stabbing him. Angelica had just gotten home from school when she heard her sisters screaming. She ran outside and saw appellant and the other boys, whom she knew from school, surrounding Eduardo and hitting him as he covered his face with his hands. The trio continued hitting Eduardo for a few seconds and then ran away down an alley with

¹ All further statutory references are to the Penal Code.

² On February 15, 2017, the Tulare County District Attorney filed a petition charging appellant with second degree murder (§ 187, subd. (a)) with a gang enhancement. On October 26, 2017, the matter came on for hearing jointly with the jurisdiction hearing of Eric M., another minor who participated in the underlying offense.

Manuel holding a knife with a large blade in his hand. Eduardo ran after them a short distance, but collapsed on the ground, fatally wounded.³

Later that day, Detective Jacob Adney conducted a felony stop of a car in which appellant and Manuel were riding as passengers. The car had left the apartment where Manuel lived and stopped at a house on C Street that was known as a Norteño gang hangout.⁴ Manuel was wearing a white T-shirt that appeared to have blood on the front.

At approximately 7:00 p.m., while conducting surveillance of Manuel's apartment, Tulare Police Corporal Jose Esparza saw Eric and two other subjects dressed in dark clothing as they looked for something in bushes near the apartment. The three left shortly in a car that was stopped by a detective. Esparza searched the bushes and found a sheathed knife.

Later that evening, Esparza and Detective German Barrios conducted a consent search of Manuel's apartment. In a bedroom they found a television and a folder with Norteño gang writing on it, and two cards addressed to Manuel. The writing on the folder and cards included the letters "T," "TC", "N" and "W", and several drawings of the "huelga bird," a motif used by Cesar Chavez. During his testimony as a gang expert, Detective Adney testified that the letter "N" and the huelga bird were used by Norteño gang members to represent the Norteño gang, "T," "TC" or "Tula" to show they were Norteño gang members from Tulare or Tulare County, and "W" to represent a specific gang subset whose name began with that letter. Norteño gang members wear red rosaries on their wrists to keep alive the memory of a gang member who was recently killed and to show the person wearing the rosary was associated with the gang.

³ An autopsy disclosed that Eduardo had five superficial wounds and one fatal wound to the heart that caused him to bleed to death.

⁴ Detective Raymond Guerrero testified he knew from experience that the house was a Norteño gang hangout and that the woman who lived there allowed Norteño gang members in the house and harbored them after crimes were committed. Guerrero had tracked subjects to the house and had seen subjects run inside.

Additionally, Adney conducted a warrant search of the residence where appellant lived. In a box that contained a yearbook belonging to appellant, Adney found a photo of James Schooley, a known Norteño gang member who was murdered by rival gang members. The photo showed Schooley making gang signs with his hands. The box also contained a photo of appellant wearing a red and black Cincinnati Reds hat with the letter “C” and another photo of appellant wearing a black hat with the word “Tulare” in front.⁵

Other Gang Evidence

On January 23, 2015, at a high school in Tulare, as Eric assaulted a student who was associated with the Sureño gang, Manuel came up and hit the student. When the assistant principal walked toward them, Eric and Manuel ran off.

In September 2015, Detective Barrios contacted Eric as he walked with a group of people. Eric was wearing a red rosary on his wrist and stated he was affiliated with the Norteño gang, but he did not specify a subset that he hung out with.

On September 2, 2015, Detective Guerrero contacted appellant inside the house on C Street that was known as a gang hangout. Appellant admitted he was a Norteño gang associate.⁶

Detective Adney testified that his department used 10 criteria to validate a person as a gang member. The criteria included self-admission of gang membership, having gang tattoos, affiliating with known gang members, frequenting a gang area, involvement in gang-related crimes, and self-admission of gang membership while in a custodial facility. Generally, a person had to meet three criteria to be validated as a gang member,

⁵ Detective Adney testified that Norteño gang members wear the black and red Cincinnati Reds hat with the letter “C” on it because “C” is the first letter of the word “Catorce,” which means fourteen in Spanish, and “N” (for Norteños) is the fourteenth letter of the alphabet.

⁶ According to Guerrero, it was common for gang members to identify themselves only as associates so that they did not get charged as gang members. (See § 186, subd. (a).)

although self-admission of gang membership in a custodial facility alone could validate a person as a gang member because the danger inherent in being housed with rival gang members caused arrestees booked into jail to be honest.

According to Adney, the Norteño gang was an affiliate of the Nuestra Familia prison gang and Norteño gang members were “soldiers” for that gang.⁷ Each city where the gang is located is called a channel and each channel has subsets. Each channel and each subset has a shotcaller, i.e., someone who is in charge and gives orders to other gang members. Tulare has at least six subsets of the Norteño gang. To be a member of the gang, you have to put in work, i.e., commit crimes for the gang, and back up the gang. The Norteño gang has 14 rules and regulations, called bonds, that gang members must follow. One of them requires gang members or associates to fight along with fellow Norteños when they are involved in a confrontation or an assault. Respect plays a big role in gang culture and is what every gang member strives for because without it, a person is nothing in the gang. Respect is earned many ways, such as by committing crimes of opportunity, following orders, and sticking up for other members of the gang. When a gang member is disrespected, retaliation occurs because if a gang member does nothing, he or she will lose respect from other members.

Adney further testified that based on various sources of information he considered, appellant met five criteria for validation as a Norteño gang member and Manuel and Eric each met four criteria. Adney also opined that Eric and Manuel were gang members.

After being given a hypothetical based on the underlying facts in this matter, Adney testified that the knife assault that was described in the hypothetical would benefit a criminal street gang because the victim disrespected the gang members and by retaliating, the gang members showed they were not weak and were going to be

⁷ The parties stipulated that red is the color of the Norteño gang, the number 14 is associated with the gang, and that the Sureño gang is the Norteño gang’s rival.

respected. It also intimidated and instilled fear in anyone who witnessed the stabbing, promoted the status of the gang, and helped the gang recruit new members. For these same reasons the commission of the knife assault described in the hypothetical would further the interests of the Norteño gang and its subsets.

Adney also testified that the knife assault described in the hypothetical was committed in association with other gang members because it involved three gang members and the trio helped each other in committing the assault by dominating the victim and working together.

During the defense case, Eric testified that as he was walking home with appellant and Manuel, Eduardo twice tried to run them over with a car. After the car stopped and the trio was walking by, Eduardo took a fishing pole out of the car's trunk and began hitting Manuel on the back of the head with it. Eric and appellant ran over to help Manuel because Eduardo was much bigger than Manuel. When Eric saw Manuel stabbing Eduardo, he was shocked and froze momentarily before running away with appellant and Manuel.

At the conclusion of the hearing, the court found true beyond a reasonable doubt that appellant had committed voluntary manslaughter, a lesser included offense of the second degree murder charged in the petition, and found the gang enhancement true.⁸

DISCUSSION

Appellant contends there was no evidence presented at his jurisdictional hearing that during the confrontation with the victim, he made any gang slurs or derogatory comments, wore any gang clothing, exhibited any gang signs, said anything to the victim, or that he was aware his confederates were gang members or associates. Thus, according to appellant, because the evidence was insufficient to sustain a finding that he committed

⁸ The court also found true that Eric committed voluntary manslaughter.

involuntary manslaughter for the benefit of a criminal street gang, the court erred in sustaining the gang enhancement. We disagree.

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) The same substantial evidence standard applies when reviewing a jury’s true finding on gang enhancements. (*People v. Albillar* (2010) 51 Cal.4th 47, 60–61 (*Albillar*).)

To establish a gang enhancement, the prosecution must prove two elements: (1) that the crime was “committed for the benefit of, at the direction of, *or* in association with any criminal street gang,” and (2) that the defendant had “the specific intent to promote, further, or assist in any criminal conduct by gang members” (§ 186.22, subd. (b)(1), italics added.)

As to the first element, “[n]ot every crime committed by gang members is related to a gang.” (*Albillar, supra*, 51 Cal.4th at p. 60.) However, the gang-related requirement for the enhancement may be shown by evidence indicating that several defendants “came together *as gang members*” to commit the offense, or that the offense could benefit the gang by elevating the gang’s or gang members’ status or advancing the gang’s activities. (*Albillar, supra*, 51 Cal.4th at pp. 62–63, original italics; see *People v. Gardeley* (1996) 14 Cal.4th 605, 619.) *If the evidence is sufficient to establish the crime was committed “in association” with a gang, the prosecution need not prove that it was committed for the benefit of or at the direction of a gang.* (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 (*Morales*), italics added.)

The specific intent element does not require “that the defendant act with the specific intent to promote, further, or assist a *gang*; the statute requires only the specific intent to promote, further, or assist criminal conduct by *gang members*.” (*Albillar, supra*, 51 Cal.4th at p. 67, original italics.) “[S]pecific intent to *benefit* the gang is not required.” (*Morales, supra*, 112 Cal.App.4th at p. 1198, original italics.) The specific intent element “applies to *any* criminal conduct, without a further requirement that the conduct be ‘apart from’ the criminal conduct underlying the offense of conviction sought to be enhanced.” (*Albillar, supra*, 51 Cal.4th at p. 66, original italics.) The scienter requirement is “the specific intent to promote, further, or assist in *any* criminal conduct by gang members—including the current offenses—and not merely *other* criminal conduct by gang members.” (*Albillar, supra*, 51 Cal.4th at p. 65, original italics.)

“[I]f substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the [factfinder] may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members.” (*Albillar, supra*, 51 Cal.4th at p. 68.) “Commission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist gang members in the commission of the crime.” (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322.)

The prosecution’s gang expert may testify about whether the defendant acted for the benefit of, at the direction of, or in association with a gang, even though it is an ultimate factual issue for the jury to decide, because these are matters far beyond the common experience of the jury. (*People v. Valdez* (1997) 58 Cal.App.4th 494, 508–509.)

“A gang expert[’s] testimony alone is insufficient to find an offense gang related. [Citation.] ‘[T]he record must provide some evidentiary support, other than merely the defendant’s record of prior offenses and past gang activities or personal affiliations, for a finding that the crime was committed for the benefit of, at the direction of, or in

association with a criminal street gang.’ ” (*People v. Ochoa* (2009) 179 Cal.App.4th 650, 657, italics omitted.)

Here, even assuming the evidence is insufficient to prove that appellant committed the involuntary manslaughter offense for the benefit of a criminal street gang, it supports a finding that appellant committed the offense in association with other gang members. The parties stipulated that the Norteños were a criminal street gang. Adney testified as a gang expert that a person had to meet only three of ten criteria to be validated as a gang member. Appellant met five criteria and Eric and Manuel each met four criteria that validated them as members of the Norteño gang. Thus, the record supports a finding that appellant committed his involuntary manslaughter offense in association with other gang members. Further, according to Adney, one Norteño gang rule required gang members to retaliate when they were disrespected and another rule required them to back up other members if they were involved in a confrontation. Thus, appellant’s commission of the involuntary manslaughter offense with fellow gang members and the expert’s testimony regarding the Norteño gang’s rules noted above, provide ample evidence that appellant committed that offense with the specific intent to assist criminal conduct by gang members.

Appellant cites *In re Frank S.* (2006) 141 Cal.App.4th 1192, 1197, 1199, *People v. Ramon* (2009) 175 Cal.App.4th 843, 851, *People v. Ochoa, supra*, 179 Cal.App.4th at pp. 661–662 and *People v. Albarran* (2007) 149 Cal.App.4th 214, 227, to contend the evidence does not support a finding that he committed his manslaughter offense for the benefit of a criminal street gang. However, because the evidence is sufficient to sustain a finding that he committed this offense in association with other gang members within the meaning of section 186.22, subdivision (b)(1)(C), whether he committed the manslaughter offense for the benefit of a gang is a moot issue. (*Morales, supra*, 112 Cal.App.4th at p. 1198.) Accordingly, we reject appellant’s contention that the evidence is insufficient to sustain the court’s true finding on the gang enhancement.

DISPOSITION

The order is affirmed.